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Attorneys for Defendants,
CROSSMARK, Inc. and The Dannon Company, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

KATHLEEN JOHNSTON, LORETTA	:	
WEIGNER, and JANICE	:	Civil Action No. 08-1525 (SDW)
FAHRENHOLTZ, on behalf of themselves	:	
and all others similarly-situated,	:	
	:	
Plaintiffs,	:	DECLARATION OF BRUCE O'BRIEN
	:	
v.	:	
	:	
CROSSMARK, INC., and THE DANNON	:	
COMPANY, INC.,	:	
	:	
Defendants.	:	

I, Bruce O'Brien, declare as follows:

1. I am a citizen of the United States, and an adult over the age of twenty-one (21) years. I have never been convicted of a felony or of a crime involving moral turpitude. I make this Declaration of my own personal knowledge, and could and would testify competently to the matters set forth herein if called upon to do so.

2. I am currently employed by CROSSMARK, Inc. ("CROSSMARK") as a Division Manager.

3. I received the e-mail attached hereto as Exhibit 1 at my CROSSMARK e-mail address on or about July 28, 2009, from Kara Rattray, who received it from Andrea Brower.

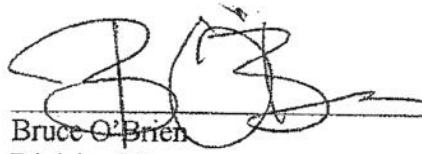
4. Ms. Rattray is currently employed by CROSSMARK as the Director of Sales Planning and Promotion for the SUPERVALU team.

5. Ms. Brower was employed by CROSSMARK as a Part-Time Retail Representative -- Surge on the SUPERVALU team from in or about June 2006 until February 2007.

6. After I received the e-mail, I voluntarily provided a copy of it to CROSSMARK's legal department.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in EDINA, MN on this 8 day of August, 2009.



Bruce O'Brien
Division Manager
CROSSMARK, Inc.

Exhibit “1”

From: Rattray, Kara
Sent: Tuesday, July 28, 2009 2:48 PM
To: Obrien, Bruce
Subject: FW: Crossmark lawsuit to recover wages due

Do you want to pass this to our legal dept?
Thanks
Kara

From: Brower, Andrea [mailto:browera@uwstout.edu]
Sent: Tuesday, July 28, 2009 2:45 PM
To: Rattray, Kara
Subject: FW: Crossmark lawsuit to recover wages due

From: Ralph Powell [mailto:rapowell13@comcast.net]
Sent: Mon 7/27/2009 5:05 PM
To: 'Ralph A Powell'
Subject: Crossmark lawsuit to recover wages due

Dear Current or former CrossMark Employee

I represent a group of current and former CrossMark employees who were allegedly not paid for all the hours they worked. A lawsuit has been filed in Federal Court to seek back pay.

The areas where some employees were not paid were: (1) For administrative time spent on duties such as SalesTrak that exceeded the time employees were "allowed" to report, (2) Travel time to the first work site from home and travel time from the last worksite to home, and (3) time spent working on projects that was in excess of "budgeted" time.

RETAIL REPRESENTATIVES FILE FEDERAL LAWSUIT AGAINST CROSSMARK, INC.

Several former and current Crossmark Retail Representatives have filed a lawsuit against Crossmark in Federal District Court in Newark, New Jersey. (Docket number 08-cv-1525, Johnston, et al. v. Crossmark, Inc., et al.) The lawsuit alleges that Crossmark has unlawfully deprived full-time and regular part-time Retail Representatives throughout the United States of straight-time and overtime pay to which they were entitled since January 1, 2006. We are seeking to recover all straight-time and overtime wages that Crossmark failed to pay for work that was performed.

The basis for the lawsuit against Crossmark is the *Fair Labor Standards Act*, a federal statute,

which provides that employees covered under the *Act* must be paid for all time that they spend performing work that is required by their employer.

ADMINISTRATIVE TIME. In our lawsuit, we contend that Crossmark failed to pay Retail Reps for all of the time they spent performing required administrative tasks at the beginning and end of each workday and at other times. These administrative tasks include downloading information from SalesTrak, uploading information to SalesTrak, printing and organizing documents for use during the workday, checking work related voicemail messages, receiving and sending business emails, synchronization of a hand-held scanner and possibly other tasks.

BUDGETED VS. ACTUAL TIME WORKED. Some Retail Reps were given a "budgeted" amount of time to complete task(s) during a day and were paid only for the time budgeted and not the actual time it took them to complete the task. The FLSA states that employees are to be paid for all time spent working for the benefit of the employer.

TRAVEL TIME TO AND FROM HOME. The *Fair Labor Standards Act* also requires employers, including Crossmark, to pay employees covered under the *Act* continuously from the time their workday begins until their workday ends. This includes all travel time that occurs after the workday begins and before the workday ends. In our lawsuit we claim that Retail Representatives begin each workday by performing administrative tasks at home that were required by Crossmark and end each workday by performing administrative tasks required by Crossmark. However, by policy, Crossmark does not pay Retail Representatives for time less than one hour spent traveling from home to the first store location of the day and for time less than one hour spent traveling to home from the last store location of the day. Our lawsuit claims that Crossmark has violated the *Fair Labor Standards Act* by not paying Retail Representatives for *all* time they spend traveling between the start and the end of each workday.

If you are or were employed by Crossmark, Inc. as a full-time or under certain circumstances, regular part-time Retail Representative, you may be eligible to join the lawsuit and recover unpaid wages due you. Please contact Ralph A. Powell, Esquire, at 215.439.7781 or contact rpowell@powellbozeman.com for more information and to have your questions answered.

Sincerely,

Ralph A. Powell, Esquire



Ralph A. Powell, Esquire, PC
Powell & Bozeman, PA
Licensed in PA and NJ
1900 Knight Circle
Yardley, PA 19067

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215.741-5749 FAX

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